FAMILY LAW COURT 2000

A PROPOSAL TO RESTRUCTURE CALIFORNIA'S FORUM FOR THE RESOLUTION OF FAMILY RELATED CONFLICTS

1. THE NEED TO DEAL WITH CALIFORNIA'S CONTEMPORARY FAMILY LAW ISSUES

Many of California's family law courts are facing challenges which hamper their ability to fairly and efficiently serve the public. Those challenges consist of three discrete but interrelated factors: (1) the dramatic increase in unrepresented litigants, (2) the availability and use of diverse and varied forms of family law actions, and (3) increasing complexity of both the substance and procedures of family law itself. There is a clear need to maintain the court as the final arbiter of family law issues, to adjudicate where appropriate, but also to shift the emphasis from a litigation and adversary process to one in which the benefits of mediation, negotiation, and settlement are offered and encouraged. This proposal addresses those needs as well as the long overdue objectives of simplification of procedures and forms, and revitalization of the role of the bar in family law cases.

> ***Commentary****: The existing family law court system in California is falling short of its mission: to provide an accessible, just and effective forum for resolution of all types of family law conflicts. California's burgeoning and diverse population has created caseloads which have expanded in number, complexity and variety.*
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> ***The Impact of Litigants without Lawyers****. California's family law courts use the same basic principle to resolve disputes as criminal and civil courts -- the adversary system. Historically, attorneys have represented the overwhelming majority of litigants in family law cases. Because of their education and training, attorneys have been able to guide their clients through the legal system with a minimum of difficulty. The foundation of the adversary system is that the presentation of evidence by skilled advocates will ultimately produce the truth, and hence a fair and*

equitable decision. Additionally, family law rules, forms and procedures are designed to reveal accurate and full disclosure of assets, family finances, and the best interests of children. The recent dramatic shift toward self-representation has eroded traditional underpinnings. The lack of legal skills and knowledge among litigants without lawyers, with corresponding failure to comply with the technicalities of family law rules and procedures has resulted in negative impacts upon the litigants, the courts and the bar.

The existing system is procedurally far too complex for unrepresented litigants to use effectively. The range of self-represented litigants legal skills varies from those who are highly effective to those who have no knowledge or skills whatsoever. The opportunity for a mismatch of legal ability among self-represented persons is great, with a corresponding opportunity for unjust results which occur primarily because of an imbalance, or lack of legal knowledge and legal skill.

What is unique to the family law system is that the court presides over the legal alteration of family relationships, with all of the attending emotional and psychological upheaval. The adversary system tends to exacerbate the already strained relationship of the parties. This is a particularly undesirable byproduct of the system, especially where the parties have children in common. One of the undeniable truths in family law is that the negative impact of the family breakup upon children is directly proportional to the amount of conflict which exists between the parents. To the extent that our system promotes and encourages conflict between parents, it fails to serve the best interests of children.

***Complexity of Law and Procedure**. The family law system is additionally characterized by highly complex bodies of substantive law and procedure which regulate rights involving property, children, support, and personal security. In recent years the laws and procedures have become even more complex, which only serves to further confound the litigants who have chosen self-representation. Unable to wend their way through complex procedures, self-represented litigants have turned to more simplified, inexpensive[1], legal processes to solve their problems. An example of this trend is the practice of many persons who file domestic violence actions as a method of obtaining not only restraining orders, but orders for child custody and visitation, child support, and possession of property. The*

1. By law, domestic violence petitions are exempt from the payment of a $182 filing fee which is required for the filing of any other family law action.

availability of simple and effective relief oftentimes lulls the litigants into foregoing a permanent resolution of their marital status, spousal support, and property rights.

***The Impact of declining legal services**. It is the experience of many family law courts that both husband and wife are represented by attorneys in only 15% to 20% of all dissolution, legal separation and nullity cases. The decreasing utilization of attorneys is partially due to the high cost of full representation which has driven away potential clients who otherwise might have been able to afford limited assistance, advice, or preparation of forms. Hence, the high cost of full representation has driven away potential clients who otherwise might have been able to afford limited assistance, advice, or preparation of forms. The combined effects of self representation, diversity of available types of family law actions, and the increased complexity of the law have resulted in challenges to the overall effectiveness of the system. It is apparent that the changing needs of California's society have caused the current system to become outmoded.*

2. WHAT BASIC CONCEPTS SHOULD BE INCORPORATED INTO A NEW SYSTEM?

The overall goals are to increase the accessibility of the family law process, and to provide a more appropriate system of dispute and conflict resolution. In order to achieve those goals, the following concepts (objectives) are considered essential:

<u>Simplicity</u>. The entire system must be made easier to use for all litigants - both represented and unrepresented. This will require simplification of procedures, forms and rules. Some of the proposed procedures will apply to all cases and some will apply if the parties do not choose to opt out of the procedures.

Adopt Settlement, Negotiation and Mediation as the preferred process. The system needs to explicitly recognize that settlement, negotiation and mediation are the expected methods of resolution, and that the system will encourage and facilitate the parties' efforts to reach agreements. There are, however, certain situations where mediation or settlement of financial or property issues may be inappropriate, such as where there is evidence or a history of domestic violence, or where the parties imbalance in negotiation skills makes such a process inappropriate. It is therefore expected that persons acting as mediators will be trained in family law issues, and at a minimum that they will be knowledgeable in subjects involving determining and dealing with domestic violence, imbalance of negotiating skills, in addition to matters affecting marital property rights, and

support.

Increase the accessibility of attorney services. The ability of most family law litigants to afford the full panoply of legal services has nearly evaporated. The low rate of representation is detrimental to the litigants, the court and the bar. Many lawyers perceive obstacles to the ability to provide "limited" legal services, but the benefits to be realized by providing such "limited" legal services are great. Improving the ability of attorneys to represent middle income cases will help increase this accessibility.

Provide necessary assistance and information, and access to other resources. The Judicial Branch of government must not only provide a forum for adjudication of family law disputes, but it must provide basic information about how to use the processes. Essential procedural information must be provided by the court so that litigants can use the court efficiently. This information includes how the system works, what type of forms need to be prepared, and what occurs within various components of the system.

The court should also provide a referral source within the courthouse which would direct litigants to outside resources which could provide needed services. A variety of resources presently exist which can be of assistance to the family law litigant. Providing a resource referral system will enable litigants to select those services which will be of the greatest benefit or best match the needs of that party.

Case management. The trial court should have the discretion to intervene in cases in order to insure appropriate case management. Early case assessment and case management may serve to place cases on tracks which are appropriate to the particular need for resolution. At an early stage of the proceedings, the court would have the power to enter orders in a wide variety of areas including family maintenance (support, restraining orders, etc.), global mediation . of issues including property issues, reference to community resources, setting for mini-trials on "focused" issues, and prioritizing the issues to be resolved.

3. STRUCTURE OF THE NEW SYSTEM (Part 1) - Re-Defining the Procedures (not the substantive law)

A. To whom does the new system apply?

The new system should apply to all family law cases regardless of the underlying form of the action. Unless either party initially exercises their option to be exempt from some portions of the process, the cases will be included within that process. However, upon either a party's showing of good cause, stipulation of

the parties or upon the court's own motion, a case may be removed from the simplified system.

> **Commentary:** *All actions which are included include traditional family law actions of dissolution, legal separation, and nullity, and those which are typically heard by family law courts, which include petitions regarding domestic violence, parentage, enforcement (District Attorney's calendars), exclusive child custody, non-marital (Marvin) actions, URESA, UCCJA, Hague Convention, and related actions.*
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> *Regardless whether the parties opt out of the simplified process, certain components of the new system will be mandatory upon all parties and cases subject to the system. Those components are: (1) the use of simplified forms; (2) mediation of all financial issues, and referral of to other forms of alternate dispute resolution such as voluntary arbitration, references pursuant to C.C.P 638, 639, and mandatory settlement conferences ; and (3) one file - one family.*
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> *Many cases proceed by default, or without substantial conflict. Attorneys frequently provide services to their clients, even in contested cases, where court supervision or management is not necessary or desirable. For those cases, there is no need for case management. All other cases where the parties have not opted out would be subject to assessment and some level of case management. The court would retain the ability to re-impose case management upon the application of a party or upon its own motion.*

B. Simplified Forms.

To the extent possible a single, uniform petition should be used by any person seeking the assistance of the family law court. That Petition will identify the applicant, the applicant's status, and what relief the applicant is requesting. The nature of the relief requested will govern the essential nature of the action. This means for example, that an application for a dissolution, legal separation, domestic violence restraining order, paternity action, or other form of family law action, may be commenced with the same form, with the nature of the action being ultimately determined by what remedy the party is seeking, and the actual status of the parties. In essence, the party will be stating to the court, through the standardized form, "Here is who I am, what I am, and here is what I want."

> ***Commentary:*** *The initial filing determines the form of the action. A uniform form of response will also contain the same essential information as the petition, i.e. identity and statistical information, status, and a responsive request for relief. The response may also determine or change the essential nature of the original petition. For example, a petition for legal separation would be converted to an action for dissolution*

if the response petitioned for a dissolution. A petition for dissolution would not change if the response took the form of a request for a domestic violence restraining order, or the district attorney initiated an enforcement proceeding.

The committee recognizes the desirability of including district attorney child support enforcement proceedings in the initial petition. Nonetheless, the inclusion of this proceeding might result in making the petition more complex and less understandable. In addition, since these actions are always initiated by the district attorney, the need for a single petition is less strong.

C. Automatic Stipulation to Commissioner.

Upon filing initial papers, unless there is an express objection to the case not be heard by a commissioner, the party will be deemed to have stipulated to a commissioner hearing the case as a temporary judge.

Commentary: *The initial forms should conspicuously indicate that the case may be heard by a commissioner sitting as a temporary judge; that the commissioner is not a judge, and that each party has the right to have the matter heard by a judge. Unless that party affirmatively demands that the case not be heard by a commissioner, then the case may be assigned to a commissioner who may hear all matters concerning the case. Rejection of the commissioner would require the filing of an election not to accept a commissioner, and this rejection would be required at the time of the party's first filing or first appearance if no filing was made. Failure to reject the commissioner at the first opportunity would result in a waiver of the right to object to the commissioner. This waiver would not affect the right of a party to disqualify a particular commissioner pursuant to C.C.P. §170.6. The disqualification under C.C.P. §170.6 can be made up to the time of hearing on the first factual matter. The objection to the commission sitting as a temporary judge would have to be made on the first filing or appearance of a party.*

This section does not mean each county must hire a commissioner. It simply means that where there is an existing commissioner hearing family law cases, that the party's case may be assigned to a commissioner for all purposes. Additionally, the provisions allowing for the automatic stipulation to a commissioner are not meant to require that a county must change its usual procedures for assignment of family law cases. It merely provides that where commissioners are being used, that the parties will automatically stipulate to the commissioners acting as judges pro tempore by entry into the system.

D. Pretrial Hearings.

The distinction between notices of motion and OSC's would be abolished. Applications for orders (as distinguished from Judgments) would be called motions. Except for actual trials or specially set evidentiary hearings in the court's discretion, any face-to-face hearings would be heard upon declarations following simplified procedures.

E. Telephonic Hearings.

In the court's discretion, telephonic hearings would be allowed to resolve discovery disputes, disputes over interpretation of court orders, and other comparatively straightforward issues that do not involve resolution of the merits of central factual issues of importance.

> ***Commentary:*** *Telephonic hearings are inappropriate where there is any problem with a participant's full communication and understanding of the proceedings, or where the dignity of the court or court orders are involved, or where the court believes that the importance or solemnity of court proceedings and court orders should be reinforced by proceedings only through courtroom hearings. The court's discretion to allow or disallow telephonic hearings in certain cases and/or as to certain disputes must be maintained. Each court may implement telephonic hearings within the broad guidelines set forth by statewide rule.*

F. Rules of Evidence.

If the parties so stipulate, the standard for the admission of evidence would be that which applies to administrative proceedings under Government Code Section 11513:

> **"All relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the extent that they are**

otherwise required by statute to be recognized at the hearing, and irrelevant and unduly repetitious evidence shall be excluded."

Commentary: Except in actions one party seeks to hold another in contempt of court, Parties should be given the opportunity to agree to try their cases under more relaxed rules of evidence if they so desire. Use of common sense rules for the admission of evidence would increase efficiency, diminish parties frustrations, and reduces the overall expense of trying cases.

G. Direct Testimony by Declaration, Telephone, or Other Electronic Means.

1. Declaration.

The court may order that the direct testimony of some or all witnesses, or all witnesses testifying as to a particular subject, shall be presented in declaration form, subject to cross examination, and may require declarations to be exchanged at a specified time in advance of the trial or hearing date. Where a witness gives testimony on more than one subject, the court may, in its discretion, require some portion, or all the testimony of that witness to be in the form of a declaration.

2. Phone or other Electronic Communication.

Evidence may, in the court's discretion, be received by telephone, fax, modem, or other communications device, provided the court is reasonably satisfied with the authenticity and integrity of the communication and that an adequate record of the communication can be provided.

Commentary: *The court may, in its discretion, permit a witness to give evidence from a location outside the court by telephone, and may call such witness on its own motion. Unless waived, the parties and counsel must have the opportunity to hear all sides on the telecommunication, and must have a fair and reasonable opportunity to either ask questions of the witness or pose questions for the court to ask. The court may establish reasonable limits on such questions or questioning. Unless waived, the entire communication must be recorded in a manner such that a transcript may be prepared through the court's reporting service.*

The factors the court may consider in determining whether to permit or to initiate telephone testimony shall include whether the testimony bears directly on a central, important contested issue; the cost and difficulty of

obtaining the witness' presence in court, the practicable ability of the parties to obtain the witness' presence in court within a reasonable time frame, whether the testimony consists primarily of reporting simple facts, as contrasted with testimony involving opinions, conclusions or subjective factors, whether the witness appears to be a neutral party or may be in some manner aligned for or against a party, and whether face-to-face confrontation and the court's ability to observe the demeanor of the witness is reasonably likely to bear on the weight given to the testimony.

For example, where information is being sought from a neutral witness concerning a straightforward observation, such as a teacher's observation of tardiness or sleepiness, or a physician's observations of injuries, or a bank or loan officer's statement of a bank or loan balance could be obtained by telephone. Where the parties are represented by counsel, counsel would make all the arrangements beforehand if the parties were unable to stipulate to the testimony. Where one or both parties are unrepresented the court might, if it deemed the information necessary, and the call appropriate, decide to initiate a call to get the information. Even if the parties have substantial means there are few cases in which a physician should have to spend a day in court to give testimony about a party's surgical history unless the testimony is central to an important issue in the case and the judicial officer believes face-to-face testimony is worth the cost and inconvenience.

On the other hand., an expert witness, or a friend or a neighbor or a relative giving testimony on a contested central issue should normally be called in court as a live witness.

H. Discovery.

Discovery of documents will be mandatory upon a general request made by letter, fax, or other writing, and will extend to all documents relevant to the issue, and will be deemed a continuing request.

Commentary: *The discovery request may be informal, but in writing. The items sought to be discovered must be sufficiently identified so as to be produced. Local rules should specify the cutoff date for discovery.*

I. One file-One Family.

Only a single court file would exist for all family law proceedings between any two particular parties. The physical existence of separate files may occur, but that through electronic case management systems, an individual bench officer hearing one portion of a family law case would be aware of the nature and existence of other orders made in all related actions and pending proceedings

involving that family.

Commentary: *Conceptually, All family related actions involving the same parties would be maintained in a single file. If the initial filing was a domestic violence action, then any other related cases involving the mother, father and child, would be filed in the same file, e.g. enforcement actions, support, or other related case. Among the types of matters to be included in the one file-one family provision would be district attorney child support enforcement cases and grandparent visitation The basic test would be unity of interest -- similar to the test used to determine the number of sides in a jury trial to determine peremptory challenges. The "one family one file" rule would not encompass juvenile filings, however, due to issues of confidentiality which pertain to juvenile matters.*

The use of one family-one file would significantly alter the system used for determining the caseload of a court. A single case under this system is likely to consume more judicial and court resources than a single case does presently; a single case under the new system would encompass multiple cases under the existing system.

As a practical matter, the physical location of all files relating to a family in one place would not be possible in some counties. At a minimum, some technological case management system should be utilized so that bench officers who are dealing with one part of a family's case should be able to determine the nature and type of orders made in the other files and pending proceedings which deal with the same family.

The committee desires to have the policy expressed in this provision also apply to cases that involve a single family but in multiple counties. The existence of cases in multiple counties may raise jurisdictional issues that are not present when all the issue are involved in the same county. Nonetheless, it is the committee's intent to include multi-county cases within this provision to the extent possible.

J. Receipt of Reports.

1. Reliance upon reports.

A court may receive and consider, without a formal foundation, and without cross-examination, a report for the purpose of making any ex parte order. For all other orders, the court may receive and consider the report without formal foundation, upon notice to the parties and the opportunity for cross-examination. The report must be one that is normally considered reliable.

Commentary: *Certain reports are deemed trustworthy and entitled to consideration by the court. Typically, this includes children's report cards, reports of hospitals, physicians, ambulance personnel, school attendance reports. Reports to be included in this category also include police reports and reports from agencies which investigate incidents of child neglect and abuse. Even though the report may be admitted without a formal foundation, the court mut be reasonably satisfied as to the authenticity of the report. This provision is not meant to alter the existing authority for receiving reports of blood tests or to affect stipulated agreements concerning the receipt of evaluators' reports.*

2. Reliance upon litigation reports.

Whenever the court specifically orders a report prepared for the guidance of the court, that report shall be received into evidence at any hearing or trial and may be considered by the court without any formal foundation. Any party may require the author of the report to appear in court for examination at trials, but the absence of such a request will not affect the admissibility of the report.

Commentary: *Reports which are specifically requested include reports of experts appointed pursuant to Evid. Code §730, reports of Family Court Services, reports prepared pursuant to Fam. Code §3110.*

4. STRUCTURE OF THE NEW SYSTEM (Part 2) - Providing and encouraging litigation alternatives.

A. Help Center. The Court will provide a help center for all litigants (1) to assist with providing pre-filing and post-filing information about court access, processes, and procedures; (2) to encourage the parties to seek legal advice and assistance; (3) to make accessible lists provided by bar association of attorneys who are willing to undertake limited consultation or representation within the means of a party; (4) to encourage the parties, where appropriate, to seek resolution of issues by agreement; (5) to maintain a list of referrals to sources of assistance for dispute resolution; (6) when requested, to advise as to the nature of various forms of relief available through legal process (such as restraining orders or spousal or child support), and the method to seek such relief; (7) to inform people as to the forms necessary to be filed for such relief and the information requested on each such form; (8) to help the litigant fill out the forms; (9) to inform the parties about the requirements for proper service of court papers; (10) to assist a party or parties in filling out the proper forms and preparing a formal order to reflect the court's rulings; (11) to help the parties

reach agreements, write up the agreements, and get the court's approval of the agreement; (12) to help the parties identify issues that appear to be susceptible of resolution through mediation; (13) to make referrals to sources of assistance in mediation and resolution of disputes, (14) to the extent necessary, assist litigants in carrying out the duties specified in the Family Law Facilitator Act which is set forth in Division 14 of the Family Law Code (AB1058) Stats. 1996, whether or not children are involved.

Commentary: *Part of the duties of the help center personnel would be to compile a list of referral sources who can provide assistance to the parties within their means, and to actively encourage providers of services to make services available to people on limited means. Specifically, this includes encouraging the development of unbundling of legal services and providing a means through which consulting or legal services of limited scope may be explained to litigants, (including judicial council approved forms for limited representation), and making referrals to providers of such services. To the extent a local bar association maintains appropriate referral lists, the center would either use that list or refer the parties to the association. Any lists maintained and provided by the center would be accomplished under provisions that would protect the court and the center from liability for referrals.*

Independent of this proposal, courts are required to establish the office of the Family Court Facilitator as part of the Family Law Facilitator Act, Stats. 1996, ch. ___, §___ . The duties of the facilitator are set forth in Fam. Code § 10004 and 10005. Many of the duties of the Family Law Facilitator are similar or identical to the more expansive duties of the Help Center as set forth herein. It is anticipated that staff of the help Center and Family Law Facilitator may involve the same persons, performing virtually the same duties. The proper allocation of costs between agencies funding the services must be strictly maintained. By local rule, courts may prescribe additional duties of the Help Center which are not inconsistent with the purposes of this proposal, and the provisions of AB 1058.

The rules governing the help center should provide that upon request, the help center may inform people which forms to file and help them fill out the forms, solicit information from the parties to understand what relief they appear to want, explicitly inquire about any child or spousal abuse, and tell people about the basic rights of parents and spouses under California law. Help Centers may perform any task for either or any party to litigation, including parties whose interests are adverse to each other. No attorney-client relationship is created between Help Center personnel and parties seeking assistance. Hence, communications made between Help Center Personnel and parties seeking assistance are not confidential or privileged. This is consistent with the provisions of the Family Law

Facilitator Act established by Fam. Code 10000, et. Seq. The help center personnel would be prohibited from giving substantive, as opposed to procedural, legal advice to any person seeking assistance.

In addition to encouraging mediation or negotiation where appropriate, the center would also help identify situations where face-to-face mediation or negotiation is not appropriate and provide appropriate services to the litigants in these cases.

B. Appropriate Case Treatment

1. Issuance of all appropriate orders.

Forms and notices would be modified to advise the parties that upon the filing of the family related matter, no matter what form of relief is sought in the initial hearing, the court will have jurisdiction to enter other family related orders. The court shall have the discretion to issue such temporary orders as are appropriate and reasonably necessary for the safety and support of the members of the family. Such orders may be issued regardless of whether orders of such nature were formally requested in the papers of any party but which appears to the court to be appropriate from the evidence at the hearing, provided that when the court makes an order not requested in the papers any party adversely affected by such order has a reasonable opportunity to be heard at the hearing, and has the opportunity to return to court within a reasonably short time to present additional evidence and argument in opposition to such order. The authorization to issue all appropriate orders would continue until final resolution of the matter.

Commentary: *Orders providing for support or safety are so basic to insuring litigants rights, that the court should be vested with the discretion to issue such orders where facts indicate that it would be unjust or inequitable not to make such orders. In order to insure due process fairness, any party affected by such orders must have the opportunity to request a de novo hearing within a short period of time, and after an opportunity to provide the court with additional, or supplemental information. Such orders should always be made with a reservation of jurisdiction to enter an order which supercedes the original order. This provision does not modify jurisdictional limitations. For example, this provision should not be interpreted to authorize a spousal support order in an action which is brought under the Uniform Parentage Act or Domestic Violence Prevention Act.*

2. Orders relating to Case Management.

The court would be authorized, beginning at the first hearing in any filed case, to provide for management of a case in a manner appropriate for that case. This first hearing could be a hearing on ex parte application, on a motion, or at any other time the case comes before the court. These orders would serve the objective of permitting the case to be handled in the most efficient and productive manner. The goal would be to have a completed order and substantial progress toward solving the problems at each hearing. The case management authority of the court would include the following areas: (1) identify companion cases in other parts of the courthouse for possible consolidation;[2] (2) identify the "live" issues in the case; (3) prioritize issues to be solved; (4) bifurcate matters to be considered first; (5) stay discovery and/or focus the efforts into the most productive areas for resolution; (6) set mini-trials on limited "focused" issues; (7) refer to mediation of issues, including non-child custody issues including pro bono attorney assisted mediation on site; (8) order references under C.C.P. §§638 and 639; (9) refer matters to community resources providing supervised visitation, anger control counseling, conflict resolution services, drug/alcohol testing, parenting education classes, etc.; (10) make necessary temporary orders; (11) initiate and schedule procedures relating to child custody, including referring the parties to attorneys, mediators, child development specialists, mental health professionals or others for consultation, representation or assistance in resolving child related issues; (12) refer parties to the help center to determine the subjects as to which the parties are in agreement, the subjects as to which they are apparently in disagreement, and, if appropriate, subjects as to which they are not ready to agree or disagree; (13) facilitate agreement and write a formal stipulation as to such matters to the extent the parties are in or near informed agreement; and (14) adopt discovery plans.

> ***Commentary:*** *If no hearing is set by the parties, the court would not impose case management. Only those cases which are contested should require the court's intervention, leaving a number of default or uncontested matters to complete the process on their own. Pilot projects would determine whether case management is more appropriate at the first hearing or by means of a separate calendar. It might also be a matter that is best left to local court option.*
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> *The court may schedule additional hearings and enter necessary orders to keep the case "on track". This could include additional status*

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2. This function could also be achieved by permitting parties to file DVPA/ Dissolution/Paternity/ D.A. Collection matters on a single petition or utilizing other techniques for keeping all matters relating to common family members in the same court.

conferences.. The court could set time standards and issue protective orders if necessary. Continuing throughout the proceedings the court may make case management orders for the purpose of facilitating resolution of some or all of the issues fairly, lawfully, and in an economical and cost efficient manner.

In any court ordered mediation which does not involve issues relating to child custody or visitation , the mediator may report to the court any agreements or partial agreements made by the parties. Except as provided by Fam. Code § 10004, if the parties to such mediation do not reach agreement, the mediator shall not recommend to the court any disposition of the issues submitted to mediation. Parties statements made during the course of mediation shall remain confidential.

The committee is aware that this proposal can raise serious resource issues. Many courts may not be able to begin the process envisioned here given the current calendar levels. The committee recognizes, however, that the utilization of these new procedures will, in the long run, reduce the demand on judicial and court resources; the difficulty is that this benefit requires the expenditure of resources "up front" prior to the receipt of the benefit or lower consumption of resources and greater service to litigants. Comment is especially sought on how this process, or a similar process, can be implemented given the present resource restrictions.

5. STRUCTURE OF THE NEW SYSTEM (Part 3) - Expanding the role of attorneys.

A. Improve Access to Limited Representation. The legal profession should be urged to explore new and innovative ways of providing legal services, including limited services and more effective use of supervised paralegal services, to presently unrepresented parties in family law matters. The Help Center may assist in coordinating the efforts of local bar associations and interested groups.

Commentary:[3] *One goal of the project is to explore the development of legal services limited in scope to the needs and budget of the litigant. At the present time many family law practitioners are reluctant to undertake a*

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3. Previous drafts of this proposal called for the implementation of statewide standards for the qualification and training of visitation supervisors and monitors. This goal has been accomplished by recent legislation directing the Judicial Council to adopt such standards by April, 1997. The commentary on this subject has thus been deleted from this draft.

client unless they are retained for the full scope of the family law matter. The project's goals include exploring the feasibility of practitioners undertaking limited representation, such as consultation only, to advise a client how to proceed on his or her own, representation only as to a particular hearing or hearings, representation only as to certain subject matters, property division, or discovery, and either consultation or no services as to other aspects. Facilitation of such limited services might include the development of forms that clearly identify the scope of representation, the fact that it is limited, the risks of limited engagement and an agreement that the attorney has no responsibility for matters outside the limited scope of the engagement. An education program should also be developed within and outside the bar to promote understanding of how such services might be used effectively to permit people of limited means to get legal advice or some representation.

B. Encourage access to low cost legal services. The Help Center, in cooperation with the local bar association if possible, may provide lists of attorneys and attorney-supervised services which provide low cost and no cost legal services for those litigants unable to afford them.

C. Define the role of counsel for children. The clarification of the proper role for court appointed counsel for children will provide greater protection both for the child and the attorney.

Commentary: *As the complexity of cases increases, and the needs and interests of the children involved in family disputes becomes less clear, courts are turning increasingly to appointing counsel for children. In high-conflict cases, it is sometimes necessary to appoint an attorney for the child who will assist the court in determining the best interests of the child. Although Family Code §3151 gives some guidance to appointed counsel, it does not solve many of the problems that are inherent in representation of a child.*